

Monte J. White and Associates, PC  
Monte J. White  
1106 Brook Ave., Hamilton Place  
Wichita Falls, TX 76301  
(940)723-0099  
(940)723-0096 Fax

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION

IN RE :	§	CASE NO. 09-70368-HDH-13
	§	
Elbert Lee Myles	§	CHAPTER 13
And	§	
Lillian Elizabeth Strawn-Myles	§	
DEBTOR(S)	§	ADVERSARY PROCEEDING NO. 09-07004

---

Elbert Lee Myles	§
And	§
Lillian Elizabeth Strawn-Myles	§
PLAINTIFFS	§
	§
V.	§
Wichita Falls USA Auto Sales, Inc. dba USA	§
Auto Sales	§
RESPONDENT	§
	§

**AMENDED MOTION FOR TURNOVER, SANCTIONS AND CIVIL CONTEMPT OF COURT**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above named Debtors in the above-styled cause requests the Court to order turnover of property of bankruptcy estate to Debtors, find Wichita Falls USA Auto Sales., Inc., dba USA Auto Sales, hereinafter referred to as USA Auto Sales, in civil contempt of court under Bankruptcy Rule 9020 and 11 U.S.C. § 362 (a)(6) and grant the Debtor sanctions under 11 U.S.C. § 362 (h) and as grounds therefore would respectfully show the Court as follows:

**JURISDICTION**

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 105 and § 362.

**FACTS**

2. On 7/28/2009, Debtors' 2000 Jaguar S-Type 10 vehicle was caused to be repossessed by USA Auto Sales.

3. On 7/30/2009, the above named Debtors filed a voluntary petition for relief under Chapter 13 of the U.S. Bankruptcy Code.
4. On 7/30/2009, Debtor's attorney's office contacted USA Auto Sales by telephone to request immediate return of the vehicle to Debtors. Debtors' attorney also faxed Notice of Bankruptcy Case Filing to them at that time. Sissy, representative/office manager of USA Auto Sales, advised Debtors' attorney's office that her boss, Gary Mills, was not there, that she did not know where the car had been taken, but that she would relay the message to him.
5. Between 7/30/2009, and 8/12/2009, at least 16 phone calls were made to USA Auto Sales in an attempt to resolve this issue and have Debtors' vehicle returned to them without further action or litigation. USA Auto Sales, Sissy, and Gary Mills failed to return the phone calls and refused to return the vehicle to Debtors until after the adversary complaint was filed with the Court on 8/12/2009. The vehicle was eventually released to the Debtors on 8/24/2009, after several personal conversations with the attorney for USA Auto, Gene Douglass.
6. Section 362(a) of the United States Bankruptcy Code, which governs this case, strictly prohibits the action that USA Auto Sales took against the Debtors' property.
7. There are no exceptions for the action taken under Section 362(b). As such, Section 362(h) of the Bankruptcy Code provides that the Debtors "shall" recover actual damages, including costs and attorneys' fees, and "may" recover punitive damages, for the injury caused them by USA Auto Sales' willful violation of the automatic stay.

PRAYER

FOR THESE REASONS, the Debtors pray that the Court set this matter for hearing at it's earliest opportunity and that the Court order Turnover of property to the Debtors and find USA Auto Sales in contempt of court and impose such sanctions as the Court deems appropriate including attorney's fees, and actual damages to the Debtors.

Respectfully submitted,

Monte J. White  
1106 Brook Ave., Hamilton Place  
Wichita Falls, TX 76301  
(817) 723-0099  
(817) 723-0096 fax

/s/Monte J. White  
State Bar No. 00785232  
Attorney for Debtors

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 8/28/2009, a true and correct copy of the foregoing "Motion for Turnover, Sanctions and Civil Contempt of Court" was served on the following by U.S. Mail and on the adverse party, USA Auto Sales, by certified, return receipt requested mail No. 7005 0390 0005 5107 9818.

Walter O'Cheskey  
6308 Iola Ave  
Lubbock, Texas 79424

Wichita Falls USA Auto Sales, Inc.  
Gary T. Mills-Registered Agent  
1307 Scott St.  
Wichita Falls, TX 76301

William T. Neary  
1100 Commerce Street, 9C60  
Dallas, Texas 75302

Gene Douglas  
1811 10<sup>th</sup> St.  
Wichita Falls, TX 76301

/s/Monte J. White